

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION**

DENNIS R. BROCK,

Petitioner,

v.

WARDEN, ROSS CORR. INST.,

Respondent.

Case No. 2:16-cv-843

JUDGE JAMES L. GRAHAM

Magistrate Judge King

OPINION AND ORDER

Final judgment dismissing this habeas corpus action as time-barred was entered on June 14, 2017. *Judgment*, ECF No. 25. Since that time, Petitioner has filed a number of motions seeking to avoid that judgment. This matter is now before the Court on Petitioner's most recent motion under Rule 60(d)(3) of the Federal Rules of Civil Procedure, "Claiming Fraud by the State of Ohio Upon This Court in This Habeas Case That Has Not Yet Exceeded The AEDPA One Year Statute of Limitation Requirement of 28 U.S.C. 2244(d)(1)." *Petitioner's Motion for Relief from Judgment*, ECF No. 48.

Petitioner contends in his most recent motion that the State committed fraud by concealing the trial court's lack of jurisdiction in this case. Petitioner states that he has filed an action against the trial judge under 42 U.S.C. § 1983 regarding civil rights violations on this basis and that, under these circumstances, the statute of limitations has yet to expire.

Under Rule 60(d)(3) of the Federal Rules of Civil Procedure, a court may set aside a final judgment "for fraud on the court." *Id.* "Relief under Rule 60(d)(3), is usually "reserved for circumstances in which, for example, a judge or a juror has been bribed, a bogus document is inserted in the record, or improper influence has been exerted upon the court or an attorney so

that the integrity of the court and its ability to function is directly impinged.” *McKenna v. Nestle Purina Petcare Co.*, No. C2-05-976, 2011 WL 14418, at *2 (S.D. Ohio Jan. 3, 2011) (citing *Morawski v. United States Dep't of Agric.*, No. 09–14568, slip. op., 2010 WL 2663201, at *7 (E.D. Mich. July 2, 2002)). The United States Court of Appeals for the Sixth Circuit has described the requisite “fraud on the court” as ““egregious conduct involving a corruption of the judicial process itself.”” *Gen. Medicine, P.C. v. Horizon/CMS Health Care Corp.*, 475 F. App'x 65, 71 (6th Cir. 2012) (quoting 11 Charles Alan Wright et al., *Federal Practice & Procedure* § 2870). The rule addresses

only that species of fraud which does, or attempts to, subvert the integrity of the court itself, or is a fraud perpetrated by officers of the court so that the judicial machinery cannot perform in the usual manner its impartial task of adjudging cases that are presented for adjudication, and relief should be denied in the absence of such conduct.

Demjanjuk v. Petrovsky, 10 F.3d 338, 352-53 (6th Cir. 1993) (vacating extradition order in light of a *Brady* violation by government attorneys) (quoting 7 Moore's *Federal Practice and Procedure* ¶ 60.33). A movant seeking to establish fraud sufficient to warrant relief under Rule 60(d) must present clear and convincing evidence of

(1)[conduct] on the part of an officer of the court; that (2) is directed to the judicial machinery itself; (3) is intentionally false, willfully blind to the truth, or is in reckless disregard of the truth; (4) is a positive averment or a concealment when one is under a duty to disclose; and (5) deceives the court.

Johnson v. Bell, 605 F.3d 333, 339 (6th Cir. 2010); *Carter v. Anderson*, 585 F.3d 1007, 1011-12 (6th Cir. 2009).

Petitioner has utterly failed to meet this standard. His assertion of fraud is entirely without support. He filed this action almost six and one-half years after the statute of limitations had expired. Moreover, his allegation that the trial court lacked jurisdiction likewise lacks support and, as this Court has held, does not provide a basis for altering the dismissal of this

action as time-barred. Nothing presented in Petitioner's current motion persuades this Court that the final judgment previously entered in this action was entered in error.

Petitioner's motion for relief from judgment, ECF No. 48, is **DENIED**.

IT IS SO ORDERED.

Date: March 15, 2019

s/James L. Graham
JAMES L. GRAHAM
United States District Judge